Senate



General Assembly

File No. 734

January Session, 2011

Substitute Senate Bill No. 1212

Senate, May 3, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PROTECTIONS FOR RENTERS AFTER THE FORECLOSURE OF A BUILDING IN WHICH THEY ARE LIVING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- Section 1. (NEW) (*Effective July 1, 2011*) (a) For purposes of this section:
- 3 (1) "Bona fide tenant" means a tenant who (A) is not the mortgagor 4 or owner of the property, and (B) entered into the rental agreement in 5 an arms-length transaction;
- 6 (2) "Premises", "rental agreement" and "tenant" have the same 7 meanings as provided in section 47a-1 of the general statutes;
- 8 (3) "Bona fide buyer" means a purchaser who (A) is not a parent or 9 subsidiary organization of, or otherwise affiliated with, a foreclosing 10 party in whom absolute title has vested, and (B) entered into an 11 agreement for the sale of the foreclosed property in an arms-length 12 transaction for a price that is not substantially less than fair market

13 value; and

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- (4) "Single-family house" means a residential building that containsonly one dwelling unit.
 - (b) In addition to the provisions of section 47a-20e of the general statutes, whenever a mortgage or lien of residential real property other than a single-family house has been foreclosed and there is a bona fide tenant in possession on the date absolute title vests in the mortgagee, lienholder or successor in interest, no execution of ejectment may be applied for by, or issued to, the foreclosing party and no summary process action pursuant to chapter 832 of the general statutes or other action to dispossess such tenant may be commenced by the foreclosing party except (1) for a reason set forth in subsection (b) of section 47a-23c of the general statutes, or (2) on the ground that the foreclosing party has entered into an agreement to sell the premises in which the bona fide buyer has required that the building be vacant as a condition of the sale. Any dispute concerning the amount of rent to be paid by the tenant during such period of occupancy may be resolved in accordance with subsection (c) of section 47a-23c of the general statutes.
 - (c) Any summary process action or other action authorized pursuant to subdivision (2) of subsection (b) of this section shall not be commenced until (1) in the case of a written rental agreement entered into more than sixty days before the commencement of the foreclosure action, the expiration date contained in such rental agreement or sixty days after the date absolute title vests in the mortgagee, lienholder or successor in interest, whichever occurs first, or (2) in the case of a rental agreement other than one described in subdivision (1) of this subsection, thirty days after the date absolute title vests in the mortgagee, lienholder or successor in interest.
 - (d) Nothing in this section, section 47a-20e of the general statutes or Sections 701 to 704, inclusive, of the federal Protecting Tenants at Foreclosure Act, P.L. 111-22, as amended from time to time, shall limit or supersede the right of any tenant under section 47a-23c of the

46 general statutes or any other law to remain in occupancy without

- regard to foreclosure. Nothing in this section precludes a foreclosing
- 48 party from negotiating an incentive agreement with a tenant pursuant
- 49 to section 47a-20f of the general statutes, provided the foreclosing
- 50 party clearly informs the tenant that pursuant to this section he or she
- 51 cannot be evicted without cause.

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This act shal sections:	l take effect as follov	vs and s	shall amend the following
Section 1	July 1, 2011	•	New section

Statement of Legislative Commissioners:

In section 1(b)(2), "a contract" was changed to "an agreement" for consistency with the terminology used in the definition of "bona fide buyer".

JUD Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

No additional costs are anticipated to be incurred by the Judicial Department in response to actions brought in the Superior Court to contest rental amounts when a tenant is occupying a foreclosed property.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis sSB 1212

AN ACT CONCERNING PROTECTIONS FOR RENTERS AFTER THE FORECLOSURE OF A BUILDING IN WHICH THEY ARE LIVING.

SUMMARY:

This bill allows certain tenants who live in multi-family buildings that have been foreclosed upon to continue to live there unless (1) the foreclosing party has entered into an agreement to sell the building in which the buyer requires the building to be vacant as a condition of sale or (2) there is good cause to evict the tenant (e.g., nonpayment of rent). The bill applies in addition to existing law's protections for tenants of foreclosed properties.

The bill provides that disputes about the rental amount when such a tenant is occupying a property after foreclosure may be resolved by a fair rent commission, where available, or a Superior Court.

The bill specifies that the bill, existing law's protections for tenants of foreclosed properties, and the federal Protecting Tenants at Foreclosure Act (see BACKGROUND) do not limit or supersede a tenant's rights under any law (including existing protections for certain tenants who are at least age 62, blind, or disabled) to continue to occupy a foreclosed property.

It also specifies that it does not prevent a foreclosing party from negotiating an incentive agreement (i.e., "cash for keys") for the tenant to vacate the property (see BACKGROUND), as long as the foreclosing party clearly informs the tenant that, under the bill, the tenant cannot be evicted without cause.

EFFECTIVE DATE: July 1, 2011

PROTECTIONS FOR TENANTS OF MULTI-FAMILY BUILDINGS IN FORECLOSURE

When a mortgage or lien on a multi-family residential property is foreclosed upon, and there is a tenant living there when absolute title vests in the mortgagee, lienholder, or successor in interest (i.e., one who follows another in ownership or control of property), the bill prohibits (1) a foreclosing party from applying to eject the tenant or a court from issuing such an ejection order or (2) bringing any eviction action against the tenant, except for either of the following reasons:

- 1. good cause (see below), which means they cannot be evicted because their lease expires, or
- 2. the foreclosing entity has an agreement to sell the premises to a bona fide buyer who makes vacancy a condition of the sale (a "bona fide" buyer is one who (a) is not a parent or subsidiary organization of, or otherwise affiliated with, the foreclosing party and (b) has entered into an agreement to buy the property in an arms-length transaction for a price that is not substantially below fair market value).

Good cause includes (1) nonpayment of rent; (2) refusal to agree to a fair and equitable rent increase; (3) material noncompliance with specified duties the law imposes on tenants, if such noncompliance materially affects (a) other tenants' health and safety or (b) the premises' physical condition; (4) voiding the rental agreement by using the premises for certain illegal activities for which the tenant was convicted; (5) material noncompliance with (a) the rental agreement or (b) the landlord's rules and regulations adopted according to law; (6) the landlord's permanent removal of the dwelling unit from the housing market; or (7) the landlord's bona fide intention to use the unit as his or her principal residence.

These protections apply to "bona fide" tenants, i.e., those that (1) are someone other than the mortgagor (borrower) or property owner and (2) have leased the property in an arms-length transaction.

If the foreclosing party brings an eviction action because he or she has entered into a sale agreement with a buyer who requires the building to be vacant as a condition of sale, the same time frames apply as in existing law for tenants of foreclosed property. That is, if the tenant entered into a written rental agreement more than 60 days before the start of the foreclosure action, eviction proceedings are prohibited until the lease expires or 60 days after the foreclosing party or successor in interest obtains absolute title, whichever occurs first. For other tenants, eviction proceedings are prohibited for 30 days after the foreclosing party or successor in interest obtains absolute title.

Under existing law, unchanged by the bill, these time frames apply to all bona fide tenants (including tenants of single-family units) after foreclosure, unless there are other specified grounds to evict them, including (1) nonpayment of rent, (2) breach of the lease or rental agreement, (3) nuisance or serious nuisance, (4) breach of statutory duties, (5) occupying the dwelling when they never had a right or privilege to do so, or (6) using the premises for certain illegal activities for which the tenant was convicted (CGS § 47a-20e).

BACKGROUND

Tenants of Foreclosed Homes - "Cash for Keys"

By law, the minimum incentive that a mortgagee or other successor in interest may offer a tenant to vacate a foreclosed residential property must equal the greater of (1) double the security deposit and interest that would be legally due the tenant upon termination of the tenancy, (2) two months' rent, or (3) \$2,000 (CGS § 47a-20f).

Federal Protecting Tenants at Foreclosure Act

The Protecting Tenants at Foreclosure Act (Pub. L. 111-22) (2009) (codified at 12 U.S.C. 5220 note) requires an immediate successor in interest of a foreclosed residential property to provide bona fide tenants with 90 days notice before eviction. The act allows such tenants who entered leases before the notice of foreclosure to occupy the property until the lease term ends, unless the unit is sold to a buyer who will occupy it (in that case, 90 days notice of the eviction is

required). The act specifies that it does not affect state or local laws that provide longer time periods or additional protections for tenants. It has a sunset date of December 31, 2014.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute Yea 36 Nay 6 (04/15/2011)